

No. 11508

United States
Circuit Court of Appeals
For the Ninth Circuit.

CHESTER FIPPIN and ST. CLAIRE CORPORATION, a corporation,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the District of Nevada

FILED



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD

BOCCARDO & WILLIAMS,
Bank of America Building,
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JOHN R. ROSS,
Carson City, Nevada,

MORLEY GRISWOLD,
Reno, Nevada,
For the Appellant.

MILES N. PIKE,
United States Attorney,
Reno, Nevada,
For the Appellee. [1*]

* Page numbering appearing at foot of page of original certified Transcript of Record.

In the District Court of the United States
of America

in and for the District of Nevada

No. 11,481

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHESTER FIPPIN, JAMES F. BOCCARDO,
and ST. CLAIRE CORPORATION (a Cali-
fornia corporation),

Defendants.

INFORMATION FOR VIOLATION

App. Sec. 633, T.50, USC;

VHP-1; 11 F.R. 3190

The United States Attorney Charges:

Count One

That at all times mentioned herein the defendant, St. Claire Corporation, was, and still is, a corporation duly organized and existing by virtue of the laws of the State of California, and engaged primarily in the ownership and operation of certain real properties located in the States of California and Nevada.

That the President of the United States, acting under the authority vested in him as President by the Constitution and Statutes of the United States, including Title I of the First War Powers Act of

1941, and by Title III of the Act of Congress of March 28, 1942 (Public Law No. 507, 77th Congress), known as the "Second War Powers Act, 1942," as amended by the Act of Congress of December 20, 1944 (Public Law No. 509, 78th Congress, and by the Act of Congress of December 28, 1945 (Public Law No. 270, 79th Congress), did, by Executive Order 9638 of October 6, 1945, establish the Civilian Production Administration, and vested in said Administration all the functions, powers and duties of the War Production Board.

That pursuant to the functions and powers delegated to the Civilian Production Administration, certain orders, regulations and [2] directions were duly and lawfully issued for the purpose of controlling and conserving materials and facilities for use in the low cost housing program to meet the needs of returned veterans. Among the orders so issued was Veterans' Housing Program Order 1 (VHP-1), issued March 26, 1946, and amended from time to time thereafter.

By this Order VHP-1, it is found that the fulfillment of requirements for defense of the United States has created a shortage in the supply of materials and facilities required for defense, for export and private account, and it would be impossible to construct the unprecedented number of low cost housing accommodations to meet the needs of returning veterans without diverting critical materials from deferrable or less essential construction. Order VHP-1, as issued March 26, 1946, and subsequently amended, forbids the beginning of cer-

tain types of construction, as defined in the order, after the effective date of the Order, March 26, 1946, unless exempted under the said Order or specifically authorized by the Civilian Production Administration.

That defendants, Chester Fippin, James Boccardo and St. Claire Corporation (a California Corporation), and each of them, on or about May 1, 1946, without authorization of the Civilian Production Administration, wilfully did begin the construction of commercial buildings to contain a cocktail lounge, bar, gambling casino, storage room, office, rest rooms and living quarters for employees, located on the west side of U. S. Highway 50, approximately one mile east of the California-Nevada State Line, in Douglas County, State and District of Nevada, and subsequently known as "Tahoe Sky Harbor Casino," and that the cost of said commercial buildings was approximately Forty Thousand Four Hundred Five Dollars and Eighteen Cents (\$40,405.18), the same being new construction of the type prohibited by the aforesaid Order VHP-1, and was approximately Thirty-Nine Thousand Four Hundred Five Dollars and Eighteen Cents (\$39,405.18) in excess of the One Thousand Dollar (\$1000.00) exemption provided by Paragraph (d) (1)(iii) of said Order.

Count Two

The United States Attorney aforesaid realleges all of the allegations [3] of the first count of this In-

formation, except those contained in the last paragraph thereof.

That defendants, Chester Fippin, James F. Boccardo and St. Claire Corporation (a California Corporation), and each of them, on and after May 1, 1946, without authorization of the Civilian Production Administration, wilfully did carry on and participate in the construction of commercial buildings to contain a cocktail lounge, bar, gambling casino, storage room, office, rest rooms and living quarters for employees, located on the west side of U. S. Highway 50, approximately one mile east of the California-Nevada State Line, in Douglas County, State and District of Nevada, and subsequently known as "Tahoe Sky Harbor Casino," and that the cost of said commercial buildings was approximately Forty Thousand Four Hundred Five Dollars and Eighteen Cents (\$40,405.18), the same being new construction of the type prohibited by the aforesaid Order VHP-1, and was approximately Thirty-Nine Thousand Four Hundred Five Dollars and Eighteen Cents (\$39,405.18) in excess of the One Thousand Dollar (\$1000.00) exemption provided by Paragraph (d)(1)(iii) of said Order.

/s/ MILES N. PIKE,

United States Attorney.

[Endorsed]: Filed Oct. 30, 1946. [4]

[Title of District Court and Cause.]

SUMMONS

To Chester Fippin:

You are hereby summoned to appear before the District Court of the United States for the District of Nevada, at the United States Postoffice Building, in the City of Reno, County of Washoe, State and District of Nevada, on the 3rd day of December, 1946, at 10:00 o'clock a. m., of said day, to answer an information charging you with violations of the Second War Powers Act and the Veterans' Housing Program, Order 1, issued pursuant thereto.

Dated at Reno, Nevada, this 30th day of October, 1946.

[Seal]

AMOS P. DICKEY,
Clerk,

By O. F. PRATT,
Deputy.

Return on Service of Writ

United States of America,
District of Nevada—ss.

I hereby certify and return that I served the annexed Summons on the therein-named Chester Fippin by handing to and leaving a true and correct copy thereof with Chester Fippin personally

at Carson City, Nevada, in said District on the 2nd day of November, 1946.

LESLIE S. KOFOED,
U. S. Marshal.

By LELAND S. BRAWNER,
Deputy. [6]

[Endorsed]: Filed Nov. 2, 1946.

[Title of District Court and Cause.]

SUMMONS

To James F. Boccardo:

You are hereby summoned to appear before the District Court of the United States for the District of Nevada, at the United States Postoffice Building, in the City of Reno, County of Washoe, State and District of Nevada, on the 3rd day of December, 1946, at 10:00 o'clock a. m., of said day, to answer an information charging you with violations of the Second War Powers Act and the Veterans' Housing Program, Order 1, issued pursuant thereto.

Dated at Reno, Nevada, this 30th day of October, 1946.

[Seal] AMOS P. DICKEY,
 Clerk,
By O. F. PRATT,
 Deputy.

Received Nov. 4, 1946, U. S. Marshal's office, San Francisco, Calif.

Return on Service of Writ

United States of America,

Northern District of California—ss.

I hereby certify and return that I served the annexed Subpena on the therein-named St. Claire Corporation, a California Corporation. On James F. Boccardo, Secretary of St. Claire Corporation, Bank of America Bldg., by handing to and leaving a true and correct copy thereof with James F. Boccardo personally at San Jose, Cal., in said District, on the 4th day of November, 1946.

GEORGE VICE,

U. S. Marshal,

By WARREN D. CAIN,

Deputy. [8]

[Endorsed]: Filed Nov. 7, 1946.

[Title of District Court and Cause.]

SUMMONS

To St. Claire Corporation (a California corporation):

You are hereby summoned to appear before the District Court of the United States for the District of Nevada, at the United States Postoffice Building, in the City of Reno, County of Washoe, State and District of Nevada, on the 3rd day of December, 1946, at 10:00 o'clock a. m., of said day, to answer an information charging you with violations of the

Second War Powers Act and the Veterans' Housing Program, Order 1, issued pursuant thereto.

Dated at Reno, Nevada, this 30th day of October, 1946.

[Seal] AMOS P. DICKEY,
 Clerk,

By O. F. PRATT,
 Deputy.

Received Nov. 4, 1946, U. S. Marshal's office, San Francisco, Calif.

Return on Service of Writ

United States of America,
Northern District of California—ss.

I hereby certify and return that I served the annexed Subpena on the therein-named James F. Boccardo, Bank of America Bldg., by handing to and leaving a true and correct copy thereof with James F. Boccardo personally at San Jose, Cal., in said District, on the 4th day of November, 1946.

GEORGE VICE,
U. S. Marshal,

By WARREN D. CAIN,
Deputy. [10]

[Endorsed]: Filed Nov. 7, 1946.

Copy of Minutes of October 30, 1946

Wednesday, October 30, 1946

Court met this day at Reno, Nevada, pursuant to adjournment:

Present: Honorable Roger T. Foley, Judge; William J. Kane, Assistant U. S. Attorney; Thomas H. Williams, Deputy Marshal; Clifford Devine, U. S. Probation Officer; M. C. Klosky, Bailiff; Mrs. Marie D. McIntyre, Official Reporter; Amos P. Dickey, Clerk; O. F. Pratt, Chief Deputy Clerk.

[Title of Cause.]

Upon motion of William J. Kane, Esq., Assistant U. S. Attorney, it is ordered that the time for arraignment of the defendants herein be, and the same hereby is, set for December 3, 1946, at 10 o'clock a. m. at Reno, Nevada.

Copy of Minutes of December 3, 1946

Tuesday, December 3, 1946

Court met this day at Reno, Nevada, pursuant to adjournment:

Present: Honorable Roger T. Foley, Judge; Bruce R. Thompson, Assistant U. S. Attorney; William J. Kane, Assistant U. S. Attorney; Edward M. Ranson, United States Marshal; L. S. Brawner, Chief Deputy Marshal; M. C. Klosky, Bailiff; Mrs. Marie D. McIntyre, Official Reporter; Amos P. Dickey, Clerk; O. F. Pratt, Chief Deputy Clerk.

[Title of Cause.]

The defendants Chester Fippin, James F. Boccardo, and St. Claire Corporation by its president, Mr. DiNapoli, are present this day in Court in response to a summons heretofore issued. William J. Kane, Esq., Assistant U. S. Attorney, appears for and on behalf of the plaintiff, and John R. Ross, Esq., appears for the defendant Chester Fippin, and Morley Griswold, Esq., appears for the defendants James F. Boccardo and the St. Claire Corporation. The Clerk hands copies of the Information to the defendants herein. On motion of Mr. Kane, it is ordered that both counts of the Information be, and they hereby are, dismissed as to the defendant James F. Boccardo. On motion of Mr. Kane, it is ordered that Count 1 of the Information be, and it hereby is, dismissed as to the defendants Chester Fippin and St. Claire Corporation. Thereupon the defendants Chester Fippin and St. Claire Corporation are duly arraigned upon the Information herein, as required by law, and each enters a plea of nolo contendere as to Count 2, which pleas are accepted by the Court and the U. S. Attorney. Statements are made by counsel for the respective parties. Thereupon the Court pronounces judgment as to the defendant Chester Fippin as follows: "It is by the Court ordered and adjudged that the defendant, having been found guilty of the offense charged in Count 2 [11] of the Information is hereby fined in the sum of One Thousand Five Hundred (\$1,500.00) Dollars. It is further ordered that the Clerk deliver a certified copy of the judgment

and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein." As to the defendant St. Claire Corporation, the Court pronounces judgment as follows: "It is by the Court ordered and adjudged that the defendant, having been found guilty of the offense charged in Count 2 of the Information, is hereby fined in the sum of Six Thousand (\$6,000.00) Dollars. It is further ordered that the Clerk deliver a certified copy of the judgment and commitment herein to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein." The defendant Chester Fippin is remanded to the custody of the Marshal until his fine is paid. The Court retains jurisdiction for all purposes and until fines are paid. [12]

District Court of the United States
in and for the District of Nevada

No. 11,481. Criminal Information in two counts for violation of U.S.C., Title 50, Secs. 633, VHP-1; 11 F.R. 3190.

UNITED STATES

vs.

CHESTER FIPPIN, et al.

JUDGMENT AND COMMITMENT

On this 3rd day of December, 1946, came the United States Attorney, and the defendant Chester

Fippin, appearing in proper person, and by counsel, and,

The defendant having been convicted on plea of nolo contendere of the offense charged in the Information in the above-entitled cause, to wit: Ct. 1—Dismissed. Ct. 2—did, on or after May 1, 1946, without authorization of the Civilian Production Administration, wilfully carry on and participate in the construction of commercial buildings to contain a cocktail lounge, etc., located on the west side of U. S. Highway 50, approximately one mile east of the Calif.-Nev. State Line in Douglas County, Nev., and that the cost of said commercial building was approximately \$40,405.18, the same being new construction of the type prohibited by Order VHP-1, and was approximately \$39,405.18 in excess of the \$1,000 exemption provided by Para. (d)(1)(iii) of said Order, and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, it is by the Court

Ordered and adjudged that the defendant, having been found guilty of said offense, is hereby fined in the sum of One Thousand Five Hundred (\$1,500.00) Dollars.

It is further ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer

and that the same shall serve as the commitment herein.

[Seal] /s/ ROGER T. FOLEY,
United States District Judge.

A True Copy. Certified this 3rd day of December, 1946.

/s/ AMOS P. DICKEY,
Clerk,

By /s/ DAN MURPHY,
Deputy Clerk. [13]

District Court of the United States
in and for the District of Nevada

No. 11,481. Criminal Information in two counts for violation of U.S.C., Title 50, Secs. 633, VHP-1; 11 F.R. 3190.

UNITED STATES

vs.

ST. CLAIRE CORP. (a Calif. Corp.), et. al.

JUDGMENT AND COMMITMENT

On this 3rd day of December, 1946, came the United States Attorney, and the defendant St. Claire Corp., appearing in proper person, and by counsel, and,

The defendant having been convicted on plea of nolo contendere of the offense charged in the Information in the above-entitled cause, to wit: Ct. 1—Dismissed. Ct. 2—did, on or after May 1, 1946, without authorization of the Civilian Production

Administration, wilfully carry on and participate in the construction of commercial buildings to contain a cocktail lounge, etc., located on the west side of U. S. Highway 50, approximately one mile east of the Calif.-Nev. State Line in Douglas County, Nev., and that the cost of said commercial building was approximately \$40,405.18, the same being new construction of the type prohibited by Order VHP-1, and was approximately \$39,405.18 in excess of the \$1,000 exemption provided by Para. (d)(1) (iii) of said Order, and the defendant having been now asked whether it has anything to say why judgment should not be pronounced against it, and no sufficient cause to the contrary being shown or appearing to the Court, it is by the Court

Ordered and adjudged that the defendant, having been found guilty of said offense, is hereby fined in the sum of Six Thousand (\$6,000.00) Dollars.

It is further ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

[Seal] /s/ ROGER T. FOLEY,

United States District Judge.

A True Copy. Certified this 3rd day of December, 1946.

/s/ AMOS P. DICKEY,

Clerk,

By /s/ DAN MURPHY,

Deputy Clerk. [14]

[Title of District Court and Cause.]

ARRAIGNMENT AND SENTENCE

Be it remembered, that the above-entitled matter came on regularly for hearing before the Court at Reno, Nevada, on Tuesday, the 3rd of December, 1946, the plaintiff being represented by Wm. J. Kane, Esq., and the defendants, Chester Fippin and James F. Boccardo, being present in court with their counsel, John Ross, Esq., and the defendant St. Claire Corporation being represented by Morley, Esq. The following proceedings were had:

Mr. Kane: Your Honor, this is the case of United States against Chester Fippin, James F. Boccardo and the St. Claire Corporation. They are in court, your Honor, by virtue of information filed for violation of Section 633, Title 50 and VHP, which is Veterans Housing Program, No. 1. They are not in custody. This is under a summons, rather than an order, issued and I have had a number of conferences with counsel for the parties concerned in this matter, your Honor, and after their arraignment I would like to make a statement which will be in the nature of dismissal of certain defendant and dismissal of perhaps one of the counts of pleas entered by other defendants. [15]

The Court: You may proceed with the arraignment, Mr. Clerk.

Clerk reads.

Q. (By the Clerk) Chester Fippin, is that your true name? A. Yes.

Q. And James F. Boccardo, is that your true name? A. Yes.

Clerk continues reading.

Mr. Griswold: We waive the reading.

The Court: I would like to have it read. I want to know something about it.

Clerk continues reading.

Mr. Kane: Your Honor please, before any pleas are entered in this connection I would like to make a statement that it is our understanding that the defendants, Chester Fippin and St. Claire Corporations, will enter pleas of nolo contendere, as I understand, to Count 2 in the information and we will move for the dismissal of the information against the defendant James F. Boccardo.

The Court: Motion will be deferred until after the pleas are made.

Mr. Griswold: That is correct, with the understanding——

The Court: Before the motion is determined the pleas will be entered. Mr. Fippin, you have heard the reading of the first count in this information. Are you ready at this time to enter your plea?

Mr. Kane: We move to dismiss the first count, your Honor.

The Court: You have heard the reading of the second count, Mr. Fippin, what is your plea?

A. Plead nolo contendere.

The Court: Are you willing? [16]

Mr. Kane: Yes, we have no objection, your Honor, that is with the consent of counsel, Mr. Ross, present?

Mr. Ross: Yes.

The Court: Mr. Boccardo——

Mr. Kane: We move dismissal of the information, Count 1 and Count 2, as to Mr. Boccardo.

The Court: The motion to dismiss the first count as to Mr. Fippin is granted and both counts are dismissed on motion of the United States Attorney, in so far as the defendant James F. Boccardo is concerned. How about this corporation?

Mr. Griswold: The corporation is represented by Mr. Boccardo as an officer of the corporation and the corporation is ready at this time to plead.

Mr. Kane: We move dismissal of Count 1 as to the corporation and they make a plea on Count 2.

The Court: You represent the corporation, the St. Claire Corporation, Mr. Boccardo?

Mr. Boccardo: Yes, your Honor.

The Court: Have you anything to show that?

Mr. Boccardo: I have in my hotel room a certified copy of the articles of incorporation.

The Court: And authority to appear here?

Mr. Boccardo: Yes, it is authority to appear here.

The Court: If the United States attorney is satisfied.

Mr. Kane: May the record show that Mr. Di Napoli is present.

The Court: I understand you are president of the St. Claire Corporation?

Mr. Di Napoli: Yes, your Honor. [17]

The Court: You have heard the reading of the information and particularly the second count?

A. Yes.

Q. Are you ready at this time to enter your plea of guilty or not guilty? A. Nolo contendere.

The Court: You are satisfied?

Mr. Kane: No objection.

The Court: So the plea of nolo contendere of St. Claire Corporation to Count 2 may be entered. Now as to the defendant Chester Fippin and the corporation, have you anything to say at this time why judgment should not be pronounced against you according to law? I would like to get that question addressed to the corporation. Have you, as president of the corporation and on its behalf, Mr. Di Napoli, anything to say why judgment of the Court should not be pronounced against you according to law?

Mr. Griswold: As attorney for the St. Claire Corporation, we have no objection at this time. The record may so show.

Mr. Ross: The same is true as to Mr. Fippin.

The Court: I would like to hear from the United States attorney.

Mr. Kane: Your Honor, without taking too much time of the Court—I know the Court is very busy—I call your attention to the fact that the Second War Powers Act is involved in this case. It is a misdemeanor. The plea which is entered is the same nature as a plea of guilty and the fine that may be imposed is up to ten thousand dollars

and up to one year in jail. This is something new and it is the first time it has been before this court, the violation of the Veterans Housing Program that affects houses for veterans. We have given this case considerable thought, your Honor, both before and since the filing of the information. We realize that it is something [18] new in our law enforcement and judicial procedure and we feel that these laws were intended for a very noble purpose. They were not criminal matters prior to March 26th when the VHP went into effect, but nevertheless they were prohibited. We do not believe, and do not recommend, that in the case of either defendants—the corporation, of course, may not be considered in this, but Mr. Fippin—that a jail sentence is indicated or recommended. We do not recommend it. But we do believe a substantial fine is the proper punishment and we would recommend, after serious thought and consideration, a fine of a thousand dollars against the defendant Fippin and a fine of five thousand dollars against the St. Claire Corporation. We do not believe that is too punitive but sufficiently severe to prevent violations of this nature in the future. Perhaps Mr. Griswold has something to say or Mr. Ross in that connection.

Mr. Ross: If the Court please, we join in the comments made by counsel that the purpose of this act was indeed worthy——

The Court: I would like to get the record straight as to which of the defendants you represent.

Mr. Ross: The defendant Fippin, your Honor, and Mr. Griswold represents the defendant corporation, St. Claire Corporation. I said, if the Court please, as counsel for the defendant Fippin, I join and concur in the comments made by counsel, the act was indeed for a purpose that we all recognize as very worthy one. I can only say that as to the defendant and others in his particular situation, who have been involved in these business deals for a year or two prior to the enactment of the section which we are now under, it imposed rather harsh conditions upon them and the violation in this instance, I feel, was not an entire disregard of any law or regulation, but was merely an attempt to salvage and save a situation that was [19] under way and unfortunately ran counter-wise to the present section and we feel that the fine suggested is nominal and if the Court imposes that we will be very glad to pay it.

Mr. Griswold: May it please the Court, on behalf of the St. Claire Corporation, I think well, I do not want having a nolo contendere plea entered and then try to show that we are not guilty. It means that we have no defense to the second count. There is, however, this, I think that should be taken into consideration. The St. Claire Corporation were the people who advanced the money, loaned the money, for the construction that was conducted by Mr. Fippin. They violated, technically violated the law when a telegram was sent, which was more or less indefinite in its wording, and they loaned money after that time that was used in this con-

struction. I am only going to say this: these matters are all in a measure discretionary, in the sense that you have no basis, particularly under a new law of this kind, upon which to proceed. In other words, as far as we can find, there has never been a trial of one of these cases. There have probably been, not having a record of it, some pleas like this that have been entered throughout California and other places throughout the country, but there is no record of it to show. I am only going to use this as a comparative basis. Mr. Fippin—and I think the fine of one thousand dollars to Mr. Fippin is agreeable to Mr. Fippin and the United States Attorney—that comparatively five thousand dollars to the corporation—and incidentally the corporation is composed of four men, only four in the corporation, each of them owns one-fourth of that corporation—where they were not the moving spirits, the corporation was not the moving spirits, wasn't actually the people in the construction—that a fine of five thousand dollars compared to the fine of one thousand dollars of one, the four men who are paying it, is at least in my [20] opinion somewhat disproportionate. I think the fine to that corporation should not in any event exceed the amount that was fined to Mr. Fippin, that would be a thousand dollars for each one of the four men, that would be four thousand dollars, that would be the maximum, and the fine could reasonably be, if your Honor, please, the same amount charged Mr. Fipipn as though each were charged in the matter and each of them had pleaded *nolo contendere*, and I can't

arrive by any process of reasoning, I can arrive at a five thousand figure. I believe that that is too high. Mr. Kane and I have discussed it a number of times. We have gone around and around about it and I make this very simple statement, and I think Mr. Kane will agree with everything I have said as being a true statement of not only facts but conditions as we have them. I think the fine should be four thousand dollars, which would make the corporation the same as Mr. Fippin, each getting fined the same amount and that the four stockholders, the four members of the closed corporation, should not in any event be fined individually, as that is what it amounts to, more than the co-defendant, Mr. Fippin, who got one thousand dollar fine. Now I leave the matter to your Honor's good judgment, with that very simple plain statement of fact under our plea of *nolo contendere*.

The Court: I would like to make some inquiries.

Mr. Griswold: I would be glad to answer if I can.

The Court: The purpose of this law, as I understand it in reading the section, a part of the section, was to make it possible for the veterans of the last war to have the benefit of the low cost building program that the government tried to put into effect. In other words, the purpose of the law was to assist in the housing of veterans.

Mr. Griswold: That was the purpose. [21]

The Court: And the purchase of material for non-commercial enterprises.

Mr. Griswold: I think that is true, I might state this, if the Court please, and Mr. Kane will check with me on this. This plan started as an airfield, which had a right to build up to 15 thousand dollars. It was started originally by Mr. Fippin. He had at that time 23 thousand dollars plus from Mr. Kaiser, who had loaned Mr. Fippin the money. Mr. Kaiser need and wanted his money. Mr. Fippin then came to the St. Claire Corporation to see if he could borrow money from them. It took 23 thousand dollars—this was long prior to the construction—to get Mr. Kaiser out of the picture and the St. Claire Corporation loaned Mr. Fippin that amount of money and I ask Mr. Kane to check me on any statements I make, because we want the facts here. Then Mr. Fippin started in on the construction with the representation to the St. Claire Corporation that it could be done for the 15 thousand dollars. There was some reclaimed material, second-hand material, that had come from tearing down of buildings, etc. used in the construction. It is like all these other things, when you get started on them, the St. Claire Corporation was in 23 thousand and then 15 thousand dollars. After it got in, the St. Claire Corporation had nothing to do with running the casino but after the airport was in construction, as it developed into these other things that were in conjunction with the airport, there were a lot of things that were not building, in the sense that they were commercial, and as I understand there was also some constriction given on the flying of airplanes that came in. It is so blamed mixed-up, Judge, insofar as—

The Court: There is one thing I would like to find out. Which, if any, of these defendants intended to continue the operation of [22] this project when it was completed? Were all the defendants to be interested in the proceeds, directly or indirectly?

Mr. Griswold: Well, Mr. Fippin was the one who owned it and the one who was going ahead and managing and running it and he was to pay back to the St. Claire Corporation the monies that they had advanced.

The Court: Were they to have an interest?

Mr. Griswold: After it had all been paid off, then there was to be an interest, as I understand it, in the St. Claire Corporation, but that is something that was in the future.

The Court: It was going to be a permanent arrangement, where the St. Claire Corporation was to permanently participate in the proceeds?

Mr. Griswold: Not for a number of years, and then they were, I think, as rental under the premises.

The Court: But it was going to continue indefinitely, as long as the casino operated??

Mr. Griswold: Yes, percentage lease.

The Court: It wasn't really a pure loan, was it?

Mr. Griswold: Up to now I would say it was a pure loan, but that it would ripen into a percentage lease afterwards.

The Court: The concern I have in determining the proper fines to be imposed— I adopt the recommendation so far as any jail sentence for the individual defendant is concerned, but in fixing the proper fine I want to avoid a situation whereby

this might be just a little raise in that of construction to the amount of about 10 per cent. This thought that I had is that this is the first time I have had anything to do with a case of this kind. [23]

Mr. Griswold: Any of us.

The Court: And what I have seen around Nevada and other places, I wonder why there hasn't been a little more activity along this line. The fact that people go in and build bars and casinos and get material when veterans can not find enough material to build a lean-to. Now I am going to meet this situation, Mr. Griswold, so there will be an even distribution of fines so there will be no complaint on that score.

Mr. Kane: May I make one statement in connection with our recommendation. Had this arisen after March 26th, when this went into effect, I do not hesitate to tell the Court that we would have recommended considerably more. That is for the purpose of the record. A good many of these things had more or less started, that is, some money had been invested beforehand and this thing came on quickly.

The Court: Was Mr. Kaiser interested in this casino and bar project?

Mr. Griswold: No, not in any way.

The Court: And did it change from an airport venture to a casino and gambling proposition immediately after Mr. Kaiser was out of it?

Mr. Griswold: No, it was the same plan all the time before.

The Court: What is the state of the work there now?

Mr. Griswold: All finished, finished for Decoration Day, the first of June, a long time ago.

The Court: Well, regarding the defendant corporation, it will be the judgment of the Court that by virtue of the plea of *nolo contendere* to the charge contained in the second count of the information, involving a violation of Section 633, Title 50, U. S. Appendix and the regulations therein mentioned and set forth in the construction [24] of a building contrary to the rules and regulations, that as punishment therefor the corporation be fined in the sum of six thousand dollars, and the defendant Fippin will please stand. By virtue of your plea of guilty to the charge contained in the information, that is in the second count of the information, it is adjudged that the defendant is guilty of the charge therein contained, involving a violation of Section 633, Title 50, U. S. Code, of the Appendix, involving a violation of the regulations against the use of materials in other than the class of buildings permitted by law, and as punishment therefor it is ordered and adjudged that the defendant Fippin be fined in the sum of fifteen hundred dollars; the court to have jurisdiction until the fine is paid.

Mr. Griswold: The fine will be paid immediately, if the Court please.

The Court: Paid today?

Mr. Griswold: Oh yes.

The Court: And the defendant Fippin is committed to the custody of the marshal until the fine

is paid and execution issued for payment of the fine. The Court will retain jurisdiction of this case for all purposes until the judgment is completely satisfied.

Mr. Griswold: It will be taken care of.

State of Nevada,
County of Ormsby—ss.

I, Marie D. McIntyre, the duly appointed official court reporter in the United States District Court, in and for the District of Nevada, do hereby certify: That I was present and took verbatim shorthand notes of the proceedings had in the foregoing entitled matter and that the foregoing pages, numbered 1 to 14, including this page, comprise a full true and correct transcript of my said shorthand notes, to the best of my knowledge and ability.

Dated at Carson City, Nevada, December 28, 1945.

/s/ MARIE D. McINTYRE,
Official Reporter.

[Endorsed]: Filed Dec. 30, 1946. [25]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and address of appellant: Chester Fippin,
Carson City, Nevada;

Name and address of appellant's attorneys: James
F. Boccardo and Edwin H. Williams, 417 Bank of
America Bldg., San Jose, California;

Offense: Vilation of "Second War Powers Act, 1942", Section 663, as amended, and Veterans' Housing Program Order 1, (VHP-1) issued March 26, 1946, and particularly for commencing certain building construction without authorization of the Civilian Production Administration;

Concise statement of judgment or order, giving date and any sentence: Judgment of conviction imposing a fine of *Six Thousand* (\$6,000.00) Dollars; judgment being made and entered on or about December 3, 1946; [26]

The appellant is not confined in any institution.

The above-named appellant, Chester Fippin, does hereby appeal to the United States Circuit Court of Appeals, for the Ninth Circuit, from the above-stated judgment.

Dated: December 11th, 1946.

/s/ JAMES F. BOCCARDO,

/s/ EDWIN H. WILLIAMS,

BOCCARDO & WILLIAMS,

By EDWIN H. WILLIAMS,

Attorneys for Appellant.

[Endorsed]: Filed Dec. 13, 1946. [27]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and address of appellant: St. Claire Corporation, a California corporation, 417 Bank of America Building, San Jose, California;

Names and addresses of appellant's attorneys: James F. Boccardo and Edwin H. Williams, 417 Bank of America Building, San Jose, California;

Offense: Violation of "Second War Powers Act, 1942", Section 633, as amended, and Veterans' Housing Program Order 1, (VHP-1) issued March 26, 1946, and particularly for commencing certain building construction without authorization of the Civilian Production Administration;

Concise statement of judgment or order, giving date and any sentence: Judgment of conviction imposing a fine of Six Thousand (\$6,000.00) Dollars; judgment being made and entered on or about December 3, 1946; [28]

The appellant is not confined in any institution.

The above named appellant, St. Claire Corporation, a California corporation, does hereby appeal to the United States Circuit Court of Appeals, for the Ninth Circuit, from the above stated judgment.

Dated: December 11th, 1946.

/s/ JAMES F. BOCCARDO,
EDWIN H. WILLIAMS,
BOCCARDO & WILLIAMS,

By /s/ EDWIN H. WILLIAMS,
Attorneys for Appellant.

[Endorsed]: Filed Dec. 13, 1946. [29]

In the District Court of the United States
for the District of Nevada

No. 11,481

THE UNITED STATES

vs.

CHESTER FIPPIN, JAMES F. BOCCARDO,
and ST. CLAIRE CORPORATION, (a Cali-
fornia corporation)

STATEMENT OF DOCKET ENTRIES

1. Filing Information for violation of App. Sec-
tion 633, T. 50, U.S.C.; VHP-1; 11 F.R. 3190 (War
Powers Act), October 30, 1946.

2. Issuing Summons (3 originals and 3 copies
handed Marshal), October 30, 1946.

3. Entg. Order time for arraignment of def't.
herein be set for December 3, 1946 at 10 a.m. at
Reno, Nev., October 30, 1946.

4. Filing Summons, entg. return. Served Chester
Fippin. Carson City, Nevada, Nov. 2, 1946, No-
vember 2, 1946.

5. Filing Summonses. Entg. Returns. Served
James F. Boccardo at San Jose, Calif. on November
4, 1946 and served St. Claire Corporation, a Cali-
fornia Corp. by serving James F. Boccardo, Secre-
tary of St. Claire Corp, at San Jose, Calif. on
November 4, 1946, November 7, 1946.

6. Clerk hands copies of Information to defts., December 3, 1946.

7. Defendants Chester Fippin & St. Claire Corp. arraigned and enter pleas of nolo contendere to Count 2. Ordered Count 1 dismissed as to Fippin & St. Claire Corp., December 3, 1946.

8. Entg. Order dismissing case as to James F. Boccardo, December 3, 1946.

9. Judgment Order. Entg. Judgment, December 3, 1946.

10. Issuing Judgment & Commitment as to Chester Fippin & St. Claire Corp., December 3, 1946.

11. Fippin remanded til fine paid. Court retains jurisdiction until fines paid, December 3, 1946.

12. Entering Judgment as to Chester Fippin, fined in the sum of \$1500.00, December 3, 1946.

13. Entering Judgment as to St. Claire Corporation, fined in the sum of \$6000.00, December 3, 1946.

14. Filed Notice of Appeal as to Chester Fippin, December 13, 1946.

15. Filing Notice of Appeal as St. Claire Corp., December 13, 1946. (Copy of Notice in each case and Statement of Docket entries mailed C. C. of A., San Fran. 12/13/46.) (Copy of Notices mailed to U. S. Atty. 12/13/46). December 13, 1946.

Dated December 13, 1946.

/s/ AMOS P. DICKEY,
Clerk.

By /s/ J. P. FODRIN,
Deputy. [31]

In the District Court of the United States of
America in and for the District of Nevada

No. 11,481

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHESTER FIPPIN and ST. CLAIRE COR-
PORATION, a California corporation,
Defendants.

DESIGNATION OF RECORD AND PROCEED-
INGS TO BE CONTAINED IN RECORD
ON APPEAL

To Amos P. Dickey, Clerk of the above Court, and
to Miles N. Pike, United States Attorney:

Now comes Chester Fippin, by his attorneys, de-
fendant above named, and appellant, and designates
the following records and proceedings to be con-
tained in the record on appeal, to-wit:

All pleadings, records, minutes and proceedings
in this action, including the judgment and sentence
therein, and this designation, and all order, papers
and proceedings hereafter entered, filed or had in
this action in this Court.

BOCCARDO & WILLIAMS,

By /s/ EDWIN H. WILLIAMS,

Attorneys for Defendant.

[Endorsed]: Filed Dec. 20, 1946. [32]

State of California,
County of Santa Clara—ss.

Lolita W. Narvaez, being duly sworn, says:

That affiant is now and at all times herein mentioned has been a citizen of the United States, over the age of eighteen years, a resident of Santa Clara County, California, and not a party to the within action or cause; that affiant's business address is 412 Bank of America Building, San Jose, California; that affiant served a copy of the attached Designation of Record and Proceeding to be Contained in Record on Appeal by placing said copy in an envelope addressed to Mr. Miles N. Pike, United States Attorney at his office address which is Reno, Nevada which envelope was then sealed and, with postage fully prepaid thereon, was, on December 18th, 1946, deposited in the United States mail at San Jose, California; that there is delivery service by United States mail at the place so addressed or that there is regular communication by mail between the place of mailing and the place so addressed.

/s/ LOLITA W. NARVAEZ.

Subscribed and sworn to before me this 18th day of December, 1946.

[Seal] /s/ MARY ZIMMERMAN,

Notary Public in and for the County of Santa Clara,
State of California. [33]

[Title of District Court and Cause.]

DESIGNATION OF RECORD AND PROCEED-
INGS TO BE CONTAINED IN RECORD
ON APPEAL

To Amos P. Dickey, Clerk of the above Court, and
to Miles N. Pike, United States Attorney:

Now comes St. Claire Corporation, a California corporation, by its attorneys, defendant above named, and appellant, and designates the following records and proceedings to be contained in the record on appeal, to-wit:

All pleadings, minutes, records and proceedings in this action, including the judgment and sentence therein, and this designation, and all orders, papers and proceedings hereafter entered filed or had in this action in this court.

BOCCARDO & WILLIAMS,

By /s/ EDWIN H. WILLIAMS,

Attorneys for Defendant.

[Endorsed]: Filed Dec. 20, 1946. [34]

State of California,
County of Santa Clara—ss.

Lolita W. Narvaez, being duly sworn, says:

That affiant is now and at all times herein mentioned has been a citizen of the United States, over

the age of eighteen years, a resident of Santa Clara County, California, and not a party to the within action or cause; that affiant's business address is 412 Bank of America Building, San Jose, California; that affiant served a copy of the attached Designation of Record and Proceedings to be Contained in Record on Appeal by placing said copy in an envelope addressed to Mr. Miles N. Pike, United States Attorney at his office address which is Reno, Nevada which envelope was then sealed and, with postage fully prepaid thereon, was, on December 18, 1946, deposited in the United States mail at San Jose, California; that there is delivery service by United States mail at the place so addressed or that there is regular communication by mail between the place of mailing and the place so addressed.

/s/ LOLITA W. NARVAEZ.

Subscribed and sworn to before me, this 18th day of December, 1946.

[Seal] /s/ MARY ZIMMERMAN,

Notary Public in and for the County of Santa Clara,
State of California. [35]

In the District Court of the United States
for the District of Nevada

No. 11,481

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHESTER FIPPIN, JAMES F. BOCCARDO,
and ST. CLAIRE CORPORATION (a Cali-
fornia corporation),

Defendants.

CERTIFICATE OF CLERK,
U. S. DISTRICT COURT

United States of America,
District of Nevada—ss.

I, Amos P. Dickey, Clerk of the District Court of the United States for the District of Nevada, do hereby certify that I am custodian of the records, papers and files of the said United States District Court for the District of Nevada, including the records, papers and files in the case of United States of America, Plaintiff, vs. Chester Fippin, James F. Boccardo, and St. Claire Corporation (a California corporation), Defendants, No. 11,481, on the criminal docket of said Court.

I further certify that the attached transcript, consisting of 37 typewritten pages numbered 1 to 37, inclusive, contains a full, true and correct transcript of the proceedings in said case and of all papers filed therein, together with the endorsement of filing

thereon, as set forth in "Appellants' Designations of Record and Proceedings to be Contained in Record on Appeal", filed December 20, 1946, all of which are filed in this case and made a part of the transcript attached hereto, as the same appear from the originals of record and on file in my office as such Clerk [36] in Carson City, State and District aforesaid.

And I further certify that the cost of preparing and certifying to said record, amounting to \$14.80, has been paid to me by Messrs. Boccardo & Williams, Attorneys for the Appellant.

Witness my hand and the seal of said United States District Court this 8th day of January, 1947.

[Seal] /s/ AMOS P. DICKEY,
Clerk. [37]

[Endorsed]: No. 11,508. United States Circuit Court of Appeals for the Ninth Circuit. Chester Fippin and St. Claire Corporation, a corporation, Appellants, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Nevada.

Filed January 11, 1947.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of
Appeals for the Ninth Circuit

No. 11,508

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHESTER FIPPIN and ST. CLAIRE COR-
PORATION, a California corporation,
Defendants.

DESIGNATION OF RECORD AND PROCEED-
INGS TO BE CONTAINED IN RECORD
ON APPEAL AND STATEMENT OF
POINTS ON APPEAL

To Paul P. O'Brien, Clerk of the above entitled
Court and to Miles M. Pike, United States
attorney:

Now comes Chester Fippin, appellant, and in
accordance with Sub-division 6 of Rule 19 of the
Rules of this Court, hereby designates for printing
the following records and proceedings, the same
constituting the entire record of this case, to-wit:

- I. Information and return thereon:
2. Pleas of defendants:
3. Judgment of the Court:
4. Notice of Appeal:
5. Designation of Record and proceedings to be
contained in record on appeal:
6. Clerk's certificate to transcript of record:
7. Any and all other pleadings, minutes, orders,
records or proceedings in this action and also this
designation and statement of points on appeal.

And pursuant to the aforementioned rule appellant hereby states that upon appeal it intends to rely upon the following points:

1. That the information against this appellant fails to charge any criminal offense, and that it does not state facts sufficient to charge appellant with the commission of any crime:

2. That said information does not allege the commission of any act by appellant which is in violation of any law or statute of the United States of America:

3. That the acts charged against appellant in said information are lawful and were done within the guaranties of the United States Constitution, and in the exercise of his rights thereunder:

4. That Congress of the United States is prohibited by the provisions of the Constitution of the United States from using its war powers for the purpose of meeting a peace time emergency, and the same limitation applies of all Executive officers of the United States, and that all executive orders issued in execution of the war powers of the United States have no effect or validity in respect to peace time emergencies arising after the cessation of hostilities.

January 3, 1947.

BOCCARDO & WILLIAMS,

By /s/ EDWIN H. WILLIAMS,

Attorneys for Appellant.

[Endorsed]: Filed Jan. 6, 1947.

State of California,
County of Santa Clara—ss.

Mary Z. Lewis, being duly sworn, says:

That affiant is now and at all times herein mentioned has been a citizen of the United States, over the age of eighteen years, a resident of Santa Clara County, California, and not a party to the within action or cause; that affiant's business address is 412 Bank of America Building, San Jose, California; that affiant served a copy of the attached Designation of Record and Proceedings to be Contained in Record on Appeal and Statement of Points on Appeal by placing said copy in an envelope addressed to Mr. Miles N. Pike, United States Attorney, at his office address which is Reno, Nevada, which envelope was then sealed and, with postage fully prepaid thereon, was, on January 4th, 1947, deposited in the United States mail at San Jose, California; that there is delivery service by United States mail at the place so addressed or that there is regular communication by mail between the place of mailing and the place so addressed.

/s/ MARY Z. LEWIS.

Subscribed and sworn to before me, this 4th day of January, 1947.

[Seal] /s/ JAMES F. BOCCARDO,

Notary Public in and for the County of Santa Clara,
State of California.

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF RECORD AND PROCEEDINGS TO BE CONTAINED IN RECORD ON APPEAL AND STATEMENT OF POINTS ON APPEAL

To Paul P. O'Brien, Clerk of the above entitled Court and to Miles M. Pike, United States attorney:

Now comes St. Claire Corporation, a California corporation, appellant, and in accordance with Subdivision 6 of Rule 19 of the Rules of this Court, hereby designates for printing the following records and proceedings, the same constituting the entire record of this case, to-wit:

1. Information and return thereon:
 2. Pleas of defendants:
 3. Judgment of the Court:
 4. Notice of Appeal:
 5. Designation of Record and proceedings to be contained in record on appeal:
 6. Clerk's certificate to transcript of record:
 7. Any and all other pleadings, minutes, orders, records or proceedings in this action and also this designation and statement of points on appeal.
- And pursuant to the aforementioned rule this appellant hereby states that upon appeal it intends to rely upon the following points:

1. That the information against this appellant fails to charge any criminal offense, and that it does not state facts sufficient to charge appellant with the commission of any crime:

2. That said information does not allege the commission of any act by appellant which is in violation of any law or statute of the United States of America:

3. That the acts charged against appellant in said information are lawful and were done within the guaranties of the United States Constitution, and in the exercise of its rights thereunder:

4. That the Congress of the United States in prohibited by the provisions of the Constitution of the United States from using its war powers for the purpose of meeting a peace time emergency, and the same limitation applies to all executive officers of the United States, and that all executive orders issued in execution of the war powers of the United States have no effect or validity in respect to peace time emergencies arising after the cessation of hostilities.

January 3, 1947.

BOCCARDO & WILLIAMS,

By/s/ EDWIN H. WILLIAMS,

Attorneys for Appellant.

[Endorsed]: Filed Jan. 6, 1947.

State of California,
County of Santa Clara—ss.

Mary Z. Lewis, being duly sworn, says:

That affiant is now and at all times herein mentioned has been a citizen of the United States, over the age of eighteen years, a resident of Santa Clara County, California, and not a party to the within action or cause; that affiant's business address is 412 Bank of America Building, San Jose, California; that affiant served a copy of the attached Designation of Record and Proceedings to be Contained in Record on Appeal and Statement of Points on Appeal by placing said copy in an envelope addressed to Mr. Miles N. Pike, United States Attorney, at his office address which is Reno, Nevada, which envelope was then sealed and, with postage fully prepaid thereon, was, on January 4th, 1947, deposited in the United States mail at San Jose, California; that there is delivery service by United States mail at the place so addressed or that there is regular communication by mail between the place of mailing and the place so addressed.

/s/ MARY Z. LEWIS.

Subscribed and sworn to before me, this 4th day of January, 1947.

[Seal] /s/ JAMES F. BOCCARDO,

Notary Public in and for the County of Santa Clara,
State of California.